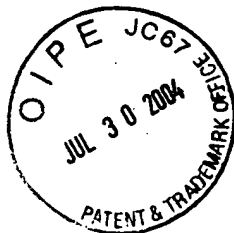


EXHIBIT 1  
DECLARATION

## ALSTON &amp; BIRD LLP

1211 East Morehead Street  
P. O. Drawer 34009  
Charlotte, NC 28234-4009704-331-6000  
Fax: 704-334-2014  
www.alston.com

Raymond O. Linker, Jr.

E-mail: rlinker@alston.com

June 15, 2000

## VIA UPS EXPRESS

Mr. John W. Olivo, Jr.  
Ward & Olivo  
382 Springfield Avenue  
Summit, New Jersey 07901Re: Danone Group  
Reissue Patent RE 36,377 for *Collapsible Container*  
Our Ref.: 3339-230

Dear Mr. Olivo:

We have carefully considered the issues raised in your April 6, 2000 letter. However, we remain of the opinion that the claims of your client's reissue patent RE 36,377 cannot properly be construed to cover the axially crushable containers of the Danone Group. The basis for this conclusion is explained more fully below.

The Containers At Issue

Your letter asserts that three containers of the Danone Group infringe the '377 patent: The Evian® bottle, illustrated in Exhibit B of your letter; the Dannon® bottle illustrated in Exhibit C; and the Volvic® bottle, illustrated in Exhibit D. You indicate that it is the "waved" or angular grooves and surfaces which you believe come within the claims of the '377 patent.

The Evian® bottle has a series of continuous circumferentially extending corrugations in a plane perpendicular to the cylindrical axis of the bottle which are designed to allow the bottle to be crushed axially. In addition, above and below these corrugations are a series of random, discontinuous angularly extending segmental grooves of varying length and width and angular direction. These segmental grooves are provided for ornamentation and are not intended for collapsing the bottle.

In the Dannon® bottle, the upper portion is provided with continuous circumferentially extending corrugations similar to those in the Evian bottle and with the same purpose of allowing the bottle to be crushed axially. The lower portion of the bottle

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424  
404-881-7000  
Fax: 404-881-77773605 Glenwood Avenue, Suite 310  
P. O. Drawer 31107  
Raleigh, NC 27622-1107  
919-420-2200  
Fax: 919-420-2260601 Pennsylvania Avenue, N.W.  
North Building, 11th Floor  
Washington, DC 20004-2601  
202-756-3300  
Fax: 202-756-3333

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includes a series of six continuous circumferential corrugations or grooves which follow a wavy (up-and-down) pattern around the bottle, while varying in width. Also, small segmental "wave-shaped" grooves are provided above the continuous corrugations for ornamentation.

The Volvic® bottle illustrated in Exhibit D is not a cylindrical bottle, but a rectangular bottle with rounded corners. The upper portion of the bottle (behind the label) has continuous circumferentially extending grooves similar to those described above. In the lower portion are a series of discontinuous wavy shaped grooves.

#### The Claims At Issue

Your letter specifically identifies independent claims 27, 41 and 55 as being infringed. We will deal with these claims in more detail later.

As to independent claim 1 or any of the other original claims of the '377 patent, it is not clear whether you still contend that any of these claims cover the bottles in question, nor is it clear whether you are asserting that dependent claims 21 - 26, which were added in the reissue, are infringed.

As to the original claims, including claim 1, I have previously noted (in my October 21, 1996 letter to Mr. Gilbert) that all of the original claims require a collapsible helical portion. You disagree with our conclusion that the Danone bottles do not employ a collapsible helical portion. We believe that you are stretching the meaning of "helical" entirely too far in saying that the Evian®, Dannon® and Volvic® bottles as represented in Exhibits B, C and D have "helical portions". Specifically, the term "helical" according to the ordinary dictionary definition and according to the usage in the patent specification refers to a helix, i.e., something spiral in form. Indeed, according to the patent disclosure, the helical formation defines a screw thread which threadably engages the cup shown at 40 in drawings.

The segmental "waved" or angular grooves present in the Evian® bottle do not follow a helical or spiral pattern along the circumference of the bottle, nor do the uniform radius surface portions of the bottle which are disposed between such grooves follow a helical path. In the Dannon® bottle, the "wavy" grooves or corrugations located in the lower portion of the bottle are continuous in the circumferential direction, which is the antithesis of a spiral or helical path, and the uniform radius surface portions of the bottle between these grooves are likewise not helical. Furthermore, the "wavy" path of travel of the grooves causes them to move both up and down along their circumferential extent, which again is in conflict with the definition of "helical". Similar reasoning applies to the Volvic® container. In addition, as noted earlier, the Volvic® container is generally rectangular, not cylindrical and therefore the container surface is not "of generally uniform radius".

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Independent Claims 27, 41 and 55

Independent claims 27, 41 and 55, and the claims which are dependent therefrom, are limited both by the prior art and by the original specification, and can therefore not be validly construed to cover the "waved" or angular structures present in the Danone bottles.

We note that a "waved" or "angled" or "angular" structure or pattern was never described in the original specification as a feature of the invention. The patent specification does not disclose or teach anything other than a continuous helical or spiral structure or pattern and there is nothing in the written description to suggest that the inventor contemplated that his invention embraces segmental angularly oriented grooves or surfaces, which are not continuous along the circumference of the bottle. Thus, to the extent that you seek to interpret the claims as being directed to such grooves or surfaces, which are not described in the specification, this runs afoul of the written description requirement of Section 112, first paragraph, as well as the statutory requirement that reissue claims must be for the same invention as that disclosed in the original patent, 35 U.S.C. § 251.

In our March 2, 2000 letter, we also brought to your attention prior art which we believe invalidates the reissue claims, but at the very least would limit the permissible scope of interpretation. The Robbins U.S. Patent 5,226,551 quite clearly shows in Figure 5 and describes in column 5, lines 62 through column 6, line 23 a structure which meets every limitation of independent claims 27, 41 and 55, as well as most of the dependent claims.

Your response is that the Robbins patent is not "prior art" because your client's invention predates the filing of the Robbins patent. For us to accept this contention, we would need to see proof of your client's conception of his invention, in the breadth of scope that you are now asserting, as well as proof of his diligence toward actual or constructive reduction to practice. In addition, we do not believe your client is entitled to rely upon the January 21, 1992 earlier filing date of the parent application, at least as to the added reissue claims.

We additionally draw your attention to Wiswell, U.S. Patent 2,139,143, copy enclosed, which discloses a collapsible container with angularly oriented grooves and with collapsible surface portions which function precisely as you have described for the Gilbert invention. A chart is enclosed showing how the Wiswell container meets every limitation of claim 27. The Wiswell reference is equally applicable to the other claims.

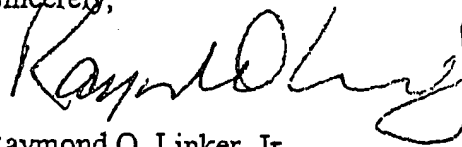
Mr. John W. Olivo, Jr.  
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Conclusion

For the reasons noted, it is our opinion that the claims of the '377 patent cannot be validly construed to cover the axially crushable containers of the Danone Group. If construed so broadly as to cover the Danone containers, the claims are invalid.

We believe that we have fully addressed the issues raised in your April 6, 2000 letter and that this should dispose of this matter. We would appreciate receiving confirmation from you to this effect.

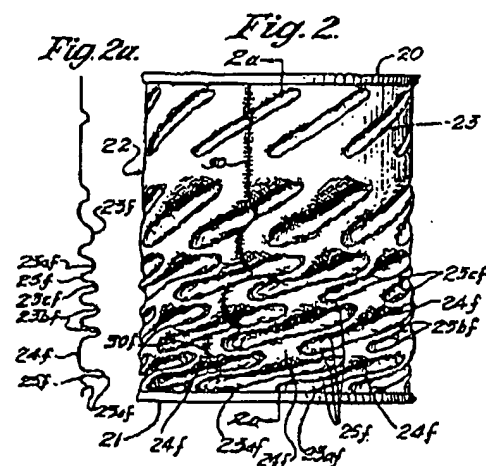
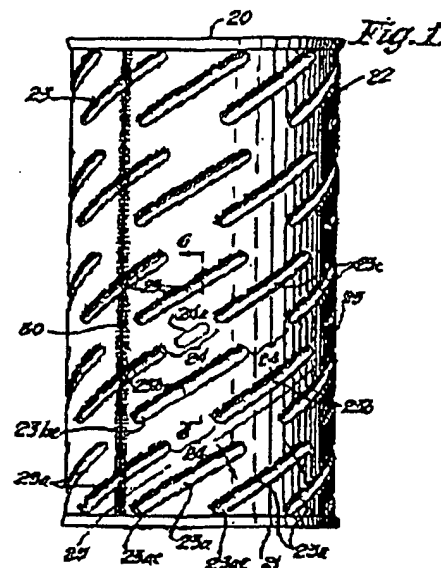
Sincerely,

A handwritten signature in black ink, appearing to read "Raymond O. Linker, Jr.", written in a cursive style.

Raymond O. Linker, Jr.

ROL:sbs  
Enclosure  
CLT01/4428924v1

Claims of RE 36,377	Corresponding structure in Wiswell US Pat. 2,129,143
<p>27. A longitudinally collapsible container comprising</p> <p>a top portion and</p> <p>a base portion</p> <p>joined by a generally cylindrical side wall structure,</p> <p>said generally cylindrical side wall structure having a longitudinal central axis and</p> <p>a collapsible surface portion,</p> <p>said collapsible surface portion having a collapsible surface of generally uniform radius extending generally parallel with respect to said central axis</p> <p>and being disposed between first and second longitudinally spaced groove portions,</p> <p>wherein said first groove portion travels around a portion of the generally cylindrical side wall structure in an upward direction, away from the bottom portion and towards the top portion of the container.</p>	<p>The container is longitudinally collapsible</p> <p>top 20</p> <p>bottom 21</p> <p>cylindrical side wall 22</p> <p>cylindrical side wall 22 has a longitudinal central axis</p> <p>The portions of the container side wall 22 located along the line 25 in Fig. 1 form a collapsible surface portion. In the collapsed state shown in Fig. 2, these portions have collapsed and folded as indicated at 25f</p> <p>The portions of the container side wall 22 located along the line 25 in Fig. 1 are also of generally uniform radius extending parallel to the central axis.</p> <p>first and second groove portions indicated at 23</p> <p>The groove portions 23 travel around a portion of the side wall in an upward direction.</p>



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